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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,713	08/20/2003	Michael D. Ellis	81788-4100	8451

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EXAMINER	
RICHMAN, GLENN E	
ART UNIT	**PAPER NUMBER**
3764	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/645,713	ELLIS ET AL.	
	Examiner	Art Unit	
	/Glenn Richman/	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 December 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *36-62,65,68 and 71-89* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *36-62,65,68 and 71-89* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The rejection from the prior office action is maintained and incorporated by reference.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 36-62, 65-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mault in view of Stubbs et al.

Mault discloses a heart rate data sensor device that is adapted to be worn on an athletes chest during mobile athletic activity and is configured to wirelessly transmit a heart rate output that is representative of a current heart rate of the athlete (0013), a speed data sensor device that is adapted to be in a physical relationship with the athlete in which the speed data sensor device moves with the athlete's mobile athletic activity and is configured to receive Global Positioning System (GPS) information (0040).

Mault does not disclose wirelessly transmitting a speed of movement output that is representative of the current speed of movement of the athlete.

Stubbs discloses wirelessly transmitting a speed of movement output that is representative of the current speed of movement of the athlete (col. 7, lines 55 – et seq.).

It would have been obvious to use Stubbs means of transmitting a speed of movement, with Mault's device, as it is well known as taught by Stubbs, to transmit a speed of a user, for displaying the instantaneous speed.

Stubbs further discloses a display device that is adapted to be worn on the wrist of the athlete and is configured to receive the heart rate output and the speed of movement output and to display the current heart rate identified by the heart rate data sensor device and the current speed of movement identified by the speed data sensor (col. 7, lines 51 - et seq.); and a storage device that is adapted to be in a physical relationship with the athlete in which the storage device moves with the athlete's mobile athletic activity and is configured to receive the current heart rate output from the heart rate data sensor device and the current speed of movement output from the speed data sensor device and to store a log of data representative of the current heart rate and the current speed of movement for tracking the mobile athletic activity for different sets (col. 6, lines 18-33, col. 10, lines 34 - et seq.).

As for claims 37-49, Mault discloses the storage device is adapted to be clipped to the athlete's clothing (fig. 9), the storage device is adapted to be carried in a pocket of an article of clothing worn by the athlete (inherent the device could be carried in a pocket), the storage device is further configured to operatively communicate with a personal computer of the athlete to download logged data (fig. 1), the display device is configured to display the current time and date (fig. 1), the speed data sensor is configured to wirelessly transmit geographic location information based on the GPS information (fig. 7), the storage device is configured to log geographic location

information of the athlete when the geographic location information is received from the speed data sensor (0028), the display device is programmable to switch the display device to receive the current heart rate output from another heart rate data sensor device and to switch the storage device to receive the current speed of movement output from another speed data sensor device (abstract) the storage device comprises random access memory for storing the logged information (42), the storage device is programmable to be switched to receive the current heart rate output from another heart rate data sensor device and programmable to be switched to receive the current speed of movement output from another speed data sensor device (abstract), the storage device is user-programmable to receive the current heart rate output from a different heart rate data sensor (abstract), the storage device is user-programmable to receive the speed of movement output from a different speed data sensor (0040), additional data sensor devices that are each adapted to be in a physical relationship with the athlete in which the additional data sensor devices move with the athlete's mobile athletic activity, and wherein the storage device and the display device are programmable to receive outputs from the additional sensor devices and to respectively display and store information representative of the additional outputs (0040), the speed data sensor device is further configured to transmit a distance output that is representative of a distance traveled by the athlete (0040).

As for claim 50, in addition to the limitations discussed above, Stubbs further discloses a data-logging device configured to be worn or carried by the user comprising a second wireless receiver configured to receive information transmitted from another

device worn or carried by the user and a memory device configured to store information received by the second wireless receiver (col. 14, lines 22 – et seq.).

As for claims 51-62, Mault further discloses the user interface device is configured to display position information received from the global positioning system receiver on the display device (fig. 7), the user interface device is configured to display speed information received from the global positioning system receiver on the display device (0040), the user interface device is configured to display heart rate information received from the heart monitor on the display device (138), the user interface device is configured to allow the display of information from devices designed after the manufacture of the user interface device (abstract), the data logging device configured to store position information received from the global positioning system receiver in the memory device (0040), the data-logging device is configured to store speed information received from the global positioning system receiver in the memory device (0040), the data-logging device is configured to store heart rate information received from the heart rate monitor in the memory device (0043), a computer and a connection path in which information stored in the data-logging device is sent to the computer using the connection path (fig. 2), a software application configured to display information received from the data-logging device (0031), the information displayed by the software application comprises information received by the data-logging device from a plurality of other devices (0031).

As for claims 65, 68, 72, 73, Stubbs discloses receiving at the personal computer heart rate data collected by a first wireless device worn by a user, receiving at the

personal computer speed data collected by a second wireless device worn or carried by the user, and simultaneously displaying the received heart rate data and the received speed data using the personal computer (col. 3, lines 6 – et seq.), the wireless display device is further configured to include a storage device that stores current heart rate data, current speed or position data, and current time information during multiple set of a particular athletic activity for later download (col. 10, lines 34 - et seq.), the wireless display device is configured to be operable with other wireless devices in addition to the heart rate monitor and the global position system and is further configured to provide the user with the opportunity to mix and match any of the wireless devices to carry with the user for supporting various different activities (col. 8, lines 6 - et seq.), the current speed of movement and GPS information are used to guide the athlete by displaying guidance on the display device (col. 7, lines 55 – et seq.), the guidance comprises position, elevation, and speed information (col. 4, lines 34 - et seq.).

As for claims 74-78, Mault further discloses guidance comprises providing route guidance using the display device (fig. 7), means for logging position data measured by the speed sensor monitor at intervals while following the route, saving the logged position data, and using the saved data for later guidance of the user while the user is wearing or carrying the position monitor (0040), recommending an athletic training route based on desired workout parameters (0040), comparing personal data collected during multiple sessions (0040), means for collecting and annotating position information with text, audio, video, and personal data (0017).

As for claims 79-82, Stubbs discloses the current speed of movement and GPS information are used to guide the athlete by displaying guidance on the display device (col. 7, lines 55 – et seq.), the current speed of movement and GPS information are used to guide the athlete by displaying guidance on the display device (col. 7, lines 55 – et seq.), the guidance comprises position, elevation, and speed information. 82. (New) The modular personal network of claim 79, wherein the guidance comprises providing route guidance using the display device (col. 4, lines 34 - et seq.).

As for claims 83-88, Mault further discloses means for logging the position data measured by the position monitor at intervals while following the route, saving the logged position data, and using the saved data for later guidance of the user while the user is wearing or carrying the position monitor (0040), the guidance comprises recommending an athletic training route based on desired workout parameters (0040), the guidance comprises comparing personal data collected during multiple sessions (0040), the speed of movement output is position data (0040), the modular wireless network comprises a modular personal network fig. 1.

As for claim 89, given the combination of Mault and Stubbs, it would be obvious to have the global positioning system device, the heart rate monitor, the user interface device, and the data-logging device are modular with respect to one another, given no unexpected results, and as all the components are modular separately.

Response to Arguments

Applicant's arguments filed 12/18/08 have been fully considered but they are not persuasive.

As to the applicant's arguments:

1. A Prima Facie case has not been established with respect to claim 36 because the rational underpinning to support the rejection has not been provided. On page 3 of the Office Action, it states "[i]t would have been obvious to use Stubbs means of transmitting a speed of movement, with Mault's device, as it is well known as taught by Stubbs, to transmit a speed of a user, for displaying, for displaying instantaneous speed." The rationale is circular. It argues essentially that it would be obvious to modify the reference with feature "X" because the second reference discloses feature "X." Moreover, there is no objective reasoning provided to combine the references. There is no such objective reasoning provided by the Office Action. More specifically, the Office Action does not provide an objective reason why the system or device in Mault would be modified to wireless transmit the speed of movement output and also to further modify Mault to display the current speed of movement given that Mault does not display speed of movement on its wrist-device to begin with.

As to 1 above, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Furthermore, as Mault discloses a body activity monitor 80, a motion sensor 114, adding one more well known means of monitoring a body or movement, Stubbs means of transmitting a speed of movement, would be

obvious to one of ordinary skill in the art, also as Mault lends itself to other sensors 0046.

2. Mault teaches away from being combined with Stubbs. Mault teaches away from displaying current speed of movement, and consequently receiving the speed of movement output. Mault is directed to assisting people in weight loss through diet and activity monitoring. Mault describes a system that monitors the energy used and the caloric intake during a day. Monitoring device 10 of Mault is described to include a body activity monitor that "monitors some aspect of the subject's body activity allowing the person's total activity or caloric expenditure to be reasonably determined." Displaying speed of movement on the wrist display in Mault wouldn't make sense because Mault is directed to weight loss. Modifying Mault to add a speed of movement display on the device in Mault may be detrimental and potentially risky as a dieter may seek to constantly increase the rate of her movement to lose weight quicker. Mault resolves this problem by displaying previously logged information on a user's PC. For example, Mault, specifically states "FIG. 5 shows a sample screen display from a local computing device such as a home computer." (Mault ¶ 40, see also ¶¶ 25, 27, 28.)(emphasis added.) The home computer is not moving with the subject and neither is the PC in any physical relationship with the subject. In addition, further review of Mault indicates that Mault states repeatedly that it is directed to determining total calorie expenditure which focuses on a different approach than athletic training. The Mault system is directed to being worn all day to track daily total caloric expenditure. Given the above, Mault teaches away from modifying the device in Mault to display speed of movement.

As to 2 above, as the applicant states, Mault is related to physical training, as is Stubbs et al. Given the addition of Stubbs speed of movement display, would give the trainee one more means of analyzes his activities and in the examiners opinion would enhance the workout, and /or monitoring of the trainee, as the speed of movement is also related to weight loss.

3. All the features of claim 36 are not disclosed by the combination of Mault and Stubbs. All the features of claim 36 are not disclosed by the Examiner's proposed combination of Mault and Stubbs. For example, the Office Action relies on Stubbs to disclose the recited display device and storage device. However, such reliance is misplaced. Claim 36 recites, among other things: a display device that is adapted to be worn on the wrist of the athlete and is configured to receive the heart rate output and the speed of movement output, and to display the current heart rate identified by the heart rate data sensor device and the current speed of movement identified by the speed data sensor; and a storage device that is adapted to be in a physical relationship with the athlete in which the storage device moves with the athlete's mobile athletic activity and is configured to receive the current heart rate output from the heart rate data sensor device and the current speed of movement output from the speed data sensor device and to store a log of data representative of the current heart rate and the current speed of movement for tracking the mobile athletic activity for different sets. Based on Applicant's review, Stubbs does not disclose the recited storage device. The Office Action, on page 3, relies on "display component 7" of Stubbs to disclose the recited storage device. However, "display component 7" is the display component, not the

storage device. The recited display device is adapted to be worn on the wrist and the recited storage device is adapted to be in a physical relationship to move with the athlete. In addition, each receives speed of movement output and heart rate output and, more specifically, the storage device receives the speed of movement output from the speed sensor device and the heart rate output from the heart rate data sensor device. "Display Component 7" of Stubbs cannot be both the recited display device and the recited storage device. In other words, if the Examiner is relying on "display component 7" to disclose the recited display device, then Stubbs does not disclose the recited storage device of claim 36 and if it is relying on "display component 7" to disclose the recited storage device, then Stubbs does not disclose the recited display device of claim 36 given that the display device and storage device are each recited to receive the speed of movement output and the heart rate output. The Office Action appears to concede this deficiency on page 9, in first full paragraph, in which the Office Action now relies on device 20 in Stubbs to disclose the recited storage device and further argues that "it is obvious that the data is first stored before transmitting." Applicant disagrees with this contention in that storing before transmitting is not an inherent feature of a transmitter. Moreover, the recited data storage device stores data for tracking the mobile athletic activity of different sets, and not some transient mark in the process of transmitting as would be the case in Stubbs.

As to 3 above, applicant is directed to figure 5-top, where a memory is clearly shown within the display component 7, which is worn and moved with the athlete. Furthermore, Stubbs display component 7 discloses a microprocessor 75, which

inherently has a memory and which receives heart rate and speed data col. 10, lines 14-28. Stubbs also discloses comparing a user's physical fitness from previous sessions, in which it is inherent the previous sessions would be stored and would be a log of previous sessions (col. 6, lines 18-33).

5. More specifically, claim 50 recites, among other things, a user interface device that is configured to be worn on the user's wrist comprising a first wireless transceiver configured to receive information from another device worn or carried by the user and a data-logging device configured to be worn or carried by the user comprising a second wireless receive configured to receive information from another device worn or carried by the user. Generally speaking, as we understand the reference and the rejection, there is no description or suggestion of a modular personal network that includes, among other things, a user interface device, worn by the user, that has a first wireless receiver to wirelessly receive information from another device worn or carried by the user) and also includes a data-logging device, worn or carried by the user, that has a second wireless receiver to wirelessly receive information from another device worn or carried by the user. For example, a runner would have a user interface on his wrist that wirelessly receives information while he or she is exercising from another device, for example on the user's leg, and also has a data-logging device, for example, on his arm, that wirelessly receives information from another device worn or carried by the runner such as on his head. Such a network is not described or suggested by Mault and Stubbs based on Applicant's review.

As to 5 above, Stubbs discloses the monitoring device maybe a single structure or subdivide with the communication between the subdivided components made via a wireless link col. 8, lines 6 - et seq.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Glenn Richman/ whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenn Richman/
Primary Examiner
Art Unit 3764